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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/563,134

03/08/2007

Isabelle Chemin

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7590

06/03/2009

OLIFF & BERRIDGE, PLC

P.O. BOX 320850

ALEXANDRIA, VA 22320-4850

EXAMINER

SNYDER, STUART

ART UNIT

PAPER NUMBER

1648

MAIL DATE

DELIVERY MODE

06/03/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/563,134	<b>Applicant(s)</b> CHEMIN ET AL.	
	<b>Examiner</b> STUART W. SNYDER	<b>Art Unit</b> 1648	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 March 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-51 and 53-62 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-51 and 53-62 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application           |
| Paper No(s)/Mail Date _____  | 6) <input checked="" type="checkbox"/> Other: <u>See Continuation Sheet</u> |

Continuation of Attachment(s) 6). Other: Printout of web page for NCBI accession number BZ561022.

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claims 1-27, 32-37, and 55-59 drawn to a nucleotide sequence derived from the so-called HXBX virus or compositions thereof or an expression cassette or vector comprising the nucleotide sequence or a cell harboring the vector.

Group II, claims 28-31, 38, 40, 42, 46, and 60-61 drawn to a peptide, protein or epitope resulting from the expression of the nucleotide sequence of a Group I species or a composition thereof.

Group III, claims 39, drawn to a method of producing the polypeptide of Group II.

Group IV, claims 41 and 43, drawn to an antibody specific to the polypeptide of Group II or composition thereof.

Group V, claims 44, drawn to a method for detecting an antibody of Group IV.

Group VI, claims 45, drawn to a method for detecting a polypeptide of Group II.

Group VII, claims 47-50, drawn to probes and primers specific to the nucleotide sequence of species of Group I.

Group VIII, claims 51, drawn to an antibody with specificity to a nucleotide sequence of Group I.

Group IX, claims 53-54, drawn to a method of detecting a nucleotide sequence of Group I using an antibody of Group VIII.

Group X, claim 60, drawn to a method of detecting a nucleotide sequence of Group I using a probe of Group VII.

2. The inventions listed as Groups I-X do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The common technical feature of the Groups is a nucleotide with sequence homology of a portion of SEQ ID NO: 4. The common technical feature is not special because such a nucleotide sequence is found in *Pseudomonas* species (see, NCBI accession number BZ561022 XP002290938; "GSS name: pacs2-164-302\_1 *Pseudomonas aeruginosa* genomic clone pacs2-164-302). Although the homology is relatively poor, it is clear that probes designed to detect the virus would hybridize to the *Ps. aeruginosa* genome under moderate to high stringency conditions.
3. This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

Nucleotide species derived from SEQ ID NO:4 (Groups I and VII, claims 1-27, 32-37, 47-50 and 55-59); polypeptide species (Group II, claims 28-31, 38, 40, 42, 46, and 60-61); and antibody species with specificity to a polynucleotide

- of Group I or a polypeptide of Group II (Groups IV and VIII, claims 41, 43 and 51).
4. Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.
- Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).
5. The claims are deemed to correspond to the species listed above in the following manner:
- Nucleotide species derived from SEQ ID NO:4 (Groups I and VII, claims 1-27, 32-37, 47-50 and 55-59); polypeptide species (Group II, claims 28-31, 38, 40, 42, 46, and 60-61); and antibody species with specificity to a polynucleotide of Group I or a polypeptide of Group II (Groups IV and VIII, claims 41, 43 and 51).
6. The following claim(s) are generic: All claims are generic or drawn to multiple species.

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7. The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons: The common technical feature of the Groups is a nucleotide with sequence homology of a portion of SEQ ID NO: 4. The common technical feature is not special because such a nucleotide sequence is found in *Pseudomonas* species (see, NCBI accession number BZ561022 XP002290938; "GSS name: pacs2-164-302\_1 *Pseudomonas aeruginosa* genomic clone pacs2-164-302). Although the homology is relatively poor, it is clear that probes designed to detect the virus would hybridize to the *Ps. aeruginosa* genome under moderate to high stringency conditions.
8. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.  
  
The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.
9. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at

least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

10. The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined. In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may**



**result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to STUART W. SNYDER whose telephone number is (571)272-9945. The examiner can normally be reached on 9:00 AM-5:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry R. Helms can be reached on (571) 272-0832. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mary E Mosher/  
Primary Examiner, Art Unit 1648

Stuart W Snyder  
Examiner

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